

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

January 14, 2020

Vice Chairman S. Warmington called the meeting to order at 4:00 p.m. and roll was taken.

MEMBERS PRESENT: S. Warmington, W. German, J. Witmer, W. Bouwman

MEMBERS ABSENT: Excused: E. Fordham, B. Mazade, T. Frens

STAFF PRESENT: M. Franzak, D. Renkenberger

OTHERS PRESENT:

ELECTION OF OFFICERS

A motion to retain E. Fordham as Chairperson and S. Warmington as Vice Chair was made by J. Witmer, supported by W. German and unanimously approved.

APPROVAL OF MINUTES

A motion that the minutes of the regular meeting of April 9, 2019 be approved was made by B. Mazade, supported by J. Witmer and unanimously approved.

PUBLIC HEARING

Hearing; Case 2019-01: Request for a variance from Section 2311 of the zoning ordinance to allow an 8-foot fence to be constructed on a residential property at 2027 Bourdon St, by Jill Montgomery-Keast. M. Franzak presented the staff report. The property is zoned R-1, Low Density Single Family Residential; therefore, fences in side and rear yards may only be a maximum of six feet tall. The applicant is seeking approval to place an eight-foot fence along the southern edge of the rear side yard due to nuisance issues with the neighbor. There is currently a six-foot tall fence in this location.

Photos of the neighboring property and applicant's property were provided. J. Montgomery-Keast explained the ongoing issues with the adjacent property owner, which included excessive noise, odors/fumes, foul language, visible trash and clutter. The neighbor often worked on race cars in their driveway, which was the cause of many of the problems, and it was interfering with the use and enjoyment of her back yard. She stated that she had tried talking to the neighbor and had resorted to contacting the police, but nothing had improved. She currently had the highest fence allowed by the ordinance, but it was not sufficient. She hoped that a higher, more solid fence on that side of the property would help block the view, noise, and fumes. She would retain the 6-foot fence around the rest of the back yard.

The following findings of fact were offered: a) that there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district, b) that the dimensional variance is necessary for the preservation and enjoyment of a

substantial property right possessed by other properties in the same zoning district and in the vicinity, i.e. that the homeowner should be able to enjoy the use of her back yard, c) that the authorizing of such dimensional variance will not be of substantial detriment to adjacent properties, as the taller fence should benefit both parties, d) that the alleged difficulty is caused by the ordinance and not by any person presently having an interest in the property or by any previous owner, e) that the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner (the fence would not make the property more profitable, and it would actually be an additional expense), and f) that the requested variance is the minimum action required to eliminate the difficulty (only the fence bordering the one neighbor will be 8 feet high; the rest will remain 6 feet high).

There were no public comments. A motion to close the public hearing was made by B. Mazade, supported by J. Witmer and unanimously approved.

A motion that the variance request to allow an 8-foot fence to be constructed in the rear yard on the southern edge of the property at 2027 Bourdon St be approved based on the review standards in Section 2502 of the Zoning Ordinance, was made by T. Frens, supported by B. Mazade and unanimously approved, with E. Fordham, B. Mazade, J. Witmer, T. Frens, and W. Bouwman voting aye.

Hearing; Case 2019-02: Request for a variance to reduce the minimum side setback to less than 6 feet at 1924 Dowd St, by Daniel Cardoso. M. Franzak presented the staff report. The property is zoned R-2, Medium Density Single Family Residential. A fire destroyed the attached garage, which sat only two feet from the side property line on the south side of the lot. Because the structure was destroyed, it lost its grandfathered rights. Current ordinance requires attached garages to meet the setback requirements of the home, which is six feet for side yards. The applicant is seeking a variance to rebuild the garage in the same place, which would allow a two-foot side setback on the southern side of the property.

B. Mazade asked if the new garage would be built on the same footprint as the old. D. Cardoso spoke on behalf of the property owner. He stated that it would, but the existing concrete had to be torn out because the requirement for footings was different now than it was in the past. W. Bouwman asked if he knew what the setback requirements were when the garage was built. D. Cardoso stated that he didn't know, but he did pull up a GIS map of the area and it appeared that many structures in the neighborhood were built close to the side property lines. B. Mazade stated that this area used to be part of Muskegon Township and the rules may have been different at that time. J. Witmer asked how close the neighboring house to the south was to the proposed garage. M. Franzak stated that it was set quite far back.

A motion to close the public hearing was made by B. Mazade, supported by J. Witmer and unanimously approved.

The following findings of fact were offered: 1) that there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district, 2) that the dimensional variance necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity, 3) that the authorization of such dimensional variance is not of substantial detriment to adjacent properties, since the house on the adjacent property is set back a good distance from the property line, 4) that the alleged difficulty is caused by the ordinance and not by any person

presently having an interest in the property, or by any previous owner, 5) that the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner, and 6) that the requested variance is the minimum action required to eliminate the difficulty.

A motion that the variance request to reduce the minimum side setback to two-feet (garage portion only) be approved based on the review standards in Section 2502 of the Zoning Ordinance, was made by W. Bouwman, supported by B. Mazade and unanimously approved, with E. Fordham, B. Mazade, J. Witmer, T. Frens, and W. Bouwman voting aye.

OLD BUSINESS

None

OTHER

None.

There being no further business, the meeting was adjourned at 4:27 p.m.

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